

EXHIBIT “L”

Expert Report of Jeffrey H. Kinrich -- Wayne Berry v. Hawaiian Express Service, Inc.

particular focus on intellectual property including copyright infringement. Analysis Group is compensated at the rate of \$485 per hour for my time. Hourly rates for other staff range from \$150 to \$360 per hour. A resume detailing my experience, testimony within the past four years, and publications within the past ten years is attached to this report as **Exhibit 1**.

IV. Documents Relied Upon

6. This report incorporates information from documents provided to me in this case including financial data from Fleming's Hawaii division, agreements between Fleming and Wayne Berry, agreements between Y. Hata and Wayne Berry, the Expert Report of Thomas Ueno and various other documents. A complete list of the documents and data sources that I relied upon is attached as **Exhibit 2**. If additional documents or information become available, I reserve the right to update my analysis.

V. Background

7. Fleming was a food wholesaler with a division in Hawaii ("Fleming Hawaii"). Fleming arranged for products to be brought into Hawaii from the mainland and then shipped to its customers' stores throughout Hawaii.
8. In 1999, Fleming purchased assets from Atlantic Pacific International, Inc. ("API"). Prior to the purchase, API had helped Fleming in transporting product from the mainland to Hawaii. API was charged with determining if it could coordinate transport for a price lower than that being offered by the vendor. If API were successful, Fleming and API would share the cost savings. After the purchase, Fleming brought this function in-house. Around the time Fleming purchased API's assets, Fleming received a free license from Wayne Berry to use the FCS.² As I understand it, the FCS was used to keep track of Fleming's shipments from the mainland.

² Memorandum from Ralph Stussi to Wayne Berry, re: License agreement for freight control system, 11/24/99 (A00449 - A00450); Deposition of Wayne Berry, 7/1/2004, pg. 81; End-User License Agreement - License for Freight Control System Software (HF00252 - HF00254)

EXHIBIT "L"